

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Creation of a Low Power Radio Service

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MM Docket No. 99-25

To: The Commission

REPLY COMMENTS OF STATION RESOURCE GROUP

Station Resource Group ("SRG") hereby submits its Reply Comments in the above-captioned, *Second Order on Reconsideration and Further Notice of Proposed Rule Making*, 20 FCC Rcd 6763 (2005) ("FNPRM").

INTRODUCTION

If nothing else, the comments filed in this proceeding illustrate the fact that few topics excite as much interest, and as much difference of opinion, as LPFM. LPFM supporters have frequently approached the proceeding as a referendum on the value of LPFM, and an opportunity to comment on every aspect of LPFM regulations. Such comments include suggestions that the Commission abandon the LPFM point system used to choose between competing LPFM applicants (Comments of Christian Community Broadcasters); transform LPFM into a commercial service (Comments of Amherst Alliance); develop a Low Power AM service (Comments of Dan Schellhardt); replace mileage separation allocation principles with a contour methodology and revamp the LPFM application form (Comments of Prometheus, et al.); eliminate requirements that LPFM applications must protect full-service stations on third adjacent channels; and, most popular of all, grant LPFM "priority" status over translators and new or modified full-service stations.

By contrast, LPFM critics have voiced complaints about interference from LPFM stations (Comments of Saga Communications) or proposed new levels of interference protection for commercial FM stations (Comments of the New Jersey Broadcasters Association).

In evaluating these diverse and often conflicting proposals, the Commission should be guided by a few basic concepts. These include the limited scope of the FNPRM, the principle of spectrum efficiency, and the goal of enhanced public service.

DISCUSSION

1. The Limited Scope of the FNPRM.

The FNPRM did not seek comment on whether or not LPFM, as currently conceived, is a valuable service, or whether the LPFM service should be revamped or substantially modified. The FNPRM, instead, sought comment on whether certain “LPFM rules may need some adjustment in order to ensure that the Commission maximize the value of the LPFM service *without harming the interests of full-power FM stations or other licensees.*” FNPRM, ¶6 (emphasis added). SRG supports many of the proposed adjustments, such as extension of the construction period for LPFM stations, relaxation of the rules concerning transfer of control, and the renewal of stations licensed to operate on a time-share basis. See SRG Comments. SRG has not commented on LPFM rules generally, and does not believe that the FNPRM invited such comment.

2. Spectrum Efficiency.

In Docket 20735¹, the Commission found that although low powered “Class D” stations provided a valuable local service, they also precluded the “opportunity for more effective noncommercial educational radio service for many who lack it.” 44 RR 2d at 244. Consequently, the FCC accorded Class D stations secondary status, “like FM translators,” *Id.*, and permitted Class D stations to operate on non-reserved as well as reserved channels. The LPFM service is similarly

¹ See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, First Report and Order, 68 FCC 2d 988 (1978). Memorandum Opinion and Order, 70 FCC 2d 972.

based on the assumption that available broadcast spectrum, in both the reserved and nonreserved FM band, should be used to provide a low power noncommercial service on a secondary basis, so as not to preclude use of spectrum for protected service to larger areas. Although such assumptions may be subject to periodic review, the Commission has not invited comments on these assumptions in this proceeding. Thoughtful reconsideration of those assumptions -- and the distinction between primary and secondary services generally -- would require a more far-reaching inquiry into the maturity of the FM service, the opportunity for further expansion of service by full-service stations and the relationship between Class D, translator and LPFM stations. The FNPRM does not address these issues, or the bedrock principle that spectrum efficiency warrants a distinction between primary and secondary services.

3. Public Service.

The issues raised by the FNPRM should be addressed in the context of the overall regulatory framework that governs thousands of stations and the public service duties imposed on various types of broadcast services. There are unquestionably some LPFM stations that provide a valuable service based on close community ties to and a keen understanding of the communities they serve. But these exemplary cases and self-imposed accountability do not define the fundamental regulatory structure and obligations of the LPFM service as a whole and should not drive the regulatory balance struck among the different classes of services. The Commission must regulate on the basis of what services different types of stations are obligated to provide.

The most fiercely contested issue in this proceeding is the relationship between LPFM stations and translators. LPFM proponents argue that they are entitled to “priority” over translators²

² Commenters differ on whether the priority should extend to all translators and all pending applications for translators, or should “grandfather” particular classes of translators, such as fill-in, “local” and “legacy.” See Comments of Prometheus, et al. and REC Network.

because of the inherently “local” nature of LPFM stations, as opposed to the distant, and presumably diffident, nature of “satellites.” See Comments of REC Network.

The issue is not quite so simple. LPFM stations are required to provide a “local” service in the sense that their service area is limited, and that the applicant’s headquarters or board members must be located near the transmitter site. See 47 C.F.R. § 853. In addition, mutually exclusive applicants may receive points for proposing at least 8 hours per day of programming that is originated within ten miles of the transmitter site. In other important respects, however, an LPFM station need not be local. For example, it need not have a main studio or a “meaningful presence” in its community of license. Current LPFM localism requirements are framed in terms of geographical proximity to a transmitter site, not in terms of service to a community. Considered purely as a regulated entity, an LPFM station has few public interest obligations. There is, for example, no requirement that an LPFM station address issues of importance to its community, maintain a public inspection file, or provide reports concerning its responsiveness to local needs. Low power is not necessarily equivalent to “local.” As one LPFM proponent notes, “A California resident could establish an unincorporated non-profit organization in Georgia with one trustee just before a filing window, be the only LPFM applicant in a community, receive a CP and a license, and operate the station just five hours a day with all programming originating at a satellite network in Texas.” Comments of Christian Community Broadcasters. Only by a long stretch of a vivid imagination is such a station “local.” The point is not to disparage LPFM, or suggest that many LPFM stations are not deeply rooted in their communities, but only to indicate that LPFM stations have no regulatory duty to provide a public service superior to that delivered by existing, noncommercial translators.

There is no dispute that existing noncommercial translators provide a valuable, and highly valued, service, particularly to remote and rural areas. For licensees supported by the Corporation for Public Broadcasting, their 660 translators located in 45 states (one out of every six translators

licensed by the FCC) play an important role in fulfilling the mandate of the Communications Act “to make public telecommunications services available to all citizens of the United States.” 47 U.S.C. § 396(a)(7). See Comments of National Public Radio, Inc., Public Radio Regional Organizations, Rocky Mountain Corporation for Public Broadcasting and SRG.

The suggestion that all applicants in the 2003 translator window are somehow suspect is misleading. A number of public radio licensees were applicants in this window and had long waited for an opportunity to apply for translators. Vermont Public Radio, for example, waited for over 7 years to obtain the 22 translator licenses awarded to them in 2003 translator window. VPR is now constructing a state-wide service with 50% matching funds from the federal government’s Public Telecommunications Facilities Program. The Commission would therefore be misguided in undermining the considerable public and private investment in the noncommercial translator system by concluding that existing noncommercial translators provide a public service that is inferior to that which may be provided by 1,175 LPFM groups holding Construction Permits.

Similarly, SRG believes, that the Commission would be misguided in allowing LPFMs to preclude the allocation of new stations or the modification of existing full-service stations based on the notion that LPFM stations provide a more “local” service. The preference for a full-service station in these circumstances is built into the distinction between primary and secondary services. SRG does, however, support according LPFM stations the respect and assistance due to any noncommercial service. Specifically, it recommends that LPFM stations be given notice of rule making proceedings and applications that could displace the LPFM station, that the applicant responsible for such displacement reimburse the LPFM station for the costs of changing channels if an alternate channel is available, See 47 C.F.R. § 1.420, and that the rules concerning major changes be waived to permit a displaced LPFM station to continue service on another channel.

CONCLUSION

This proceeding attracted a wide range of comments concerning virtually every aspect of the LPFM service. In considering these comments, the Commission should be guided by the modest scope of the FNPRM, and by basic principles of public service and spectrum efficiency. The essential goal to be advanced is that of enhancing noncommercial broadcasting as a whole.

Respectfully submitted

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